

AMENDED IN SENATE JULY 7, 2015

AMENDED IN ASSEMBLY JUNE 1, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1354

Introduced by Assembly Member Dodd

**(Coauthors: Assembly Members Bonilla, Bonta, Chávez, Cooper,
Eggman, *Cristina Garcia*, Gonzalez, and Lopez)**

**(Coauthors: Senators Allen, Block, Galgiani, Hancock, Leyva, Mitchell,
and Wolk)**

February 27, 2015

An act to amend Section 12990 of the Government Code, relating to discrimination.

LEGISLATIVE COUNSEL’S DIGEST

AB 1354, as amended, Dodd. Discrimination: equal pay: state contracting.

Existing law subjects an employer who is, or wishes to become, a contractor with the state for public works, or for goods or services, to various nondiscrimination requirements. Existing law authorizes requiring an employer to submit a nondiscrimination program to the Department of Fair Employment and Housing for approval and certification, prior to becoming a contractor or subcontractor with the state, as well as requiring the provision of periodic reports of contractor or subcontractor compliance with that program.

This bill would enact the Equal Pay for Equal Work Act of 2015. The bill would require an employer with 100 or more employees, prior to becoming a contractor or subcontractor with the state, to submit a nondiscrimination program to the Department of Fair Employment and

Housing and to submit periodic reports *no more than annually* of its compliance with that program. The bill would authorize the department to require approval and certification of the ~~program and permit the department to audit programs for compliance.~~ *program.* The bill would permit the department to require an employer with fewer than 100 employees to submit a nondiscrimination report. *The bill would require the department to define an employee for these purposes.* The bill would require the nondiscrimination program to include policies and procedures designed to ensure equal employment opportunities for all applicants and employees, an analysis of employment selection procedures, and a work force analysis, as specified. The bill would make a statement of legislative findings.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. This act shall be known, and may be cited, as the
- 2 Equal Pay for Equal Work Act of 2015.
- 3 SEC. 2. (a) The Legislature finds and declares the following:
- 4 (1) According to data from the United States Census Bureau,
- 5 full-time working women, on average, over the last decade, have
- 6 continued to earn just 77 cents for every dollar a man earns. The
- 7 wage gap is greater for women of color, with African American
- 8 women being paid an average of 64 cents for every dollar paid to
- 9 white, non-Hispanic men in 2013 and Latinas being paid just 56
- 10 cents for every dollar paid to white, non-Hispanic men.
- 11 (2) This wage disparity amounted to a yearly average wage gap
- 12 of \$10,876 in 2013 between full-time working men and full-time
- 13 working women. In total, the disparity represents more than \$490
- 14 billion in lost wages for working women every year.
- 15 (3) Disparities in pay for women have numerous negative
- 16 impacts. This pay differential shortchanges women and their
- 17 families by thousands of dollars a year and potentially hundreds
- 18 of thousands of dollars over a lifetime. Nearly 4 in 10 mothers are
- 19 primary breadwinners in their households, and nearly two-thirds
- 20 are significant earners, making pay equity critical to the economic
- 21 security of their families.
- 22 (4) Equal pay for equal work is a fundamental precept in our
- 23 nation and in California. Federal law, including the federal Equal

Pay Act of 1963 (Public Law 88-38), Title VII of the Civil Rights Act of 1964 (Public Law 88-352), and Executive Order 11246 of September 24, 1965, entitled Equal Employment Opportunity, specifically prohibits arbitrarily compensating men and women differently for the same work, as does California's Equal Pay Act.

(5) On August 6, 2014, the United States Department of Labor's Office of Federal Contract Compliance Programs issued a notice of proposed rulemaking to required covered federal contractors and subcontractors with more than 100 employees to submit an annual equal pay report on employee compensation. In California, state contractors receiving public money are obligated to comply with equal pay laws and should provide the state with aggregate wage data to advance pay equity.

(b) It is the intent of the Legislature in enacting this act to promote pay equity and nondiscrimination in setting pay and making hiring or promotional decisions, and to obtain better data on pay equity to more wholly address the problem.

SEC. 3. Section 12990 of the Government Code is amended to read:

12990. (a) Any employer who is, or wishes to become, a contractor with the state for public works or for goods or services is subject to the provisions of this part relating to discrimination in employment and to the nondiscrimination requirements of this section and any rules and regulations that implement it.

(b) (1) Prior to becoming a contractor or subcontractor with the state, an employer with 100 or more employees shall submit a nondiscrimination program to the department and shall submit periodic ~~reports~~ *reports, no more than annually*, of its compliance with that program. An employer with fewer than 100 employees may be required to submit a nondiscrimination ~~program, and~~ *program and*, if so ~~required~~ *required*, shall comply with the requirements for employers with 100 or more employees. The department may require approval and certification of a nondiscrimination ~~program and may audit programs for~~ *compliance: program. The department shall define an employee for the purposes of this paragraph.*

(2) A nondiscrimination program shall include policies and procedures designed to ensure equal employment opportunities for all applicants and employees, an analysis of employment

1 selection procedures, and a work force analysis. The work force
2 analysis shall include the following:

3 (A) An equal pay report that includes the total number of
4 workers with a specific job category identified by worker race,
5 ethnicity, and gender.

6 (B) Total wages required to be reported on Internal Revenue
7 Service Form W-2 for all workers in a specific job category
8 identified by worker race, ethnicity, and gender.

9 (C) The total hours worked *on an annual basis* for all workers
10 in a specific job category identified by worker race, ethnicity, and
11 gender. *Exempt employees shall be presumed to work 40 hours a*
12 *week for purposes of this reporting requirement.*

13 (c) Every state contract and subcontract for public works or for
14 goods or services shall contain a nondiscrimination clause
15 prohibiting discrimination on the bases enumerated in this part by
16 contractors or subcontractors. The nondiscrimination clause shall
17 contain a provision requiring contractors and subcontractors to
18 give written notice of their obligations under that clause to labor
19 organizations with which they have a collective bargaining or other
20 agreement. These contractual provisions shall be fully and
21 effectively enforced. This subdivision does not apply to a credit
22 card purchase of goods of two thousand five hundred dollars
23 (\$2,500) or less. The total amount of exemption authorized herein
24 shall not exceed seven thousand five hundred dollars (\$7,500) per
25 year for each company from which a state agency is purchasing
26 goods by credit card. It shall be the responsibility of each state
27 agency to monitor the use of this exemption and adhere to these
28 restrictions on these purchases.

29 (d) The department shall periodically develop rules and
30 regulations for the application and implementation of this section,
31 and submit them to the council for consideration and adoption in
32 accordance with the provisions of Chapter 3.5 (commencing with
33 Section 11340) of Part 1. Those rules and regulations shall describe
34 and include, but not be limited to, all of the following:

35 (1) Procedures for the investigation, approval, certification,
36 decertification, monitoring, and enforcement of nondiscrimination
37 programs.

38 (2) The size of contracts or subcontracts below which any
39 particular provision of this section shall not apply.

1 (3) The circumstances, if any, under which a contractor or
2 subcontractor is not subject to this section.

3 (4) Criteria for determining the appropriate plant, region,
4 division, or other unit of a contractor's or subcontractor's operation
5 for which a nondiscrimination program is required.

6 (5) Procedures for coordinating the nondiscrimination
7 requirements of this section and its implementing rules and
8 regulations with the California Plan for Equal Opportunity in
9 Apprenticeship, with the provisions and implementing regulations
10 of Article 9.5 (commencing with Section 11135) of Chapter 1 of
11 Part 1, and with comparable federal laws and regulations
12 concerning nondiscrimination, equal employment opportunity,
13 and affirmative action by those who contract with the United States.

14 (6) The basic principles and standards to guide the department
15 in administering and implementing this section.

16 (e) Where a contractor or subcontractor is required to prepare
17 an affirmative action, equal employment, or nondiscrimination
18 program subject to review and approval by a federal compliance
19 agency, that program may be filed with the department, instead of
20 any nondiscrimination program regularly required by this section
21 or its implementing rules and regulations. Such a program shall
22 constitute a prima facie demonstration of compliance with this
23 section. Where the department or a federal compliance agency has
24 required the preparation of an affirmative action, equal
25 employment, or nondiscrimination program subject to review and
26 approval by the department or a federal compliance agency,
27 evidence of such a program shall also constitute prima facie
28 compliance with an ordinance or regulation of any city, city and
29 county, or county that requires an employer to submit such a
30 program to a local awarding agency for its approval prior to
31 becoming a contractor or subcontractor with that agency.

32 (f) Where the department determines and certifies that the
33 provisions of this section or its implementing rules and regulations
34 are violated or determines a contractor or subcontractor is engaging
35 in practices made unlawful under this part, the department may
36 recommend appropriate sanctions to the awarding agency. Any
37 such recommendation shall take into account the severity of the

- 1 violation or violations and any other penalties, sanctions, or
- 2 remedies previously imposed.

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